**RESERVED**

**Criminal appeal no.2026 of 2001**

Govind ……Appellant

Versus

State of Uttaranchal …….Respondent

**And**

**Criminal appeal no.15 of 2002**

Ranjeet Lal ……. Appellant

Versus

State of Uttaranchal .....Respondent

**Hon'ble A.A.Desai, C.J.**
**Hon'ble Irshad Hussain J.**

**(Delivered by Hon'ble Irshad Hussain, J.)**

These appeals are directed against the judgment and order dated 4.12.2001 passed by Sri S.K.Gautam, Sessions Judge, Pauri Garhwal in S.T.Nos. 3 and 4 of 1999, convicting and sentencing the appellants-accused under section 302/34 of Indian Penal Code to imprisonment for life for committing the murder of Prem Lal at about 10:30 a.m. on 9.9.1998, in the forest of Nanthiya Siyalkundi, Tok of village Aithi within the local limits of Patti Choprakot, Tehsil Thailsain, district Pauri Garhwal.

P.W.1, Darshan Lal resident of village Aithi is the brother of the deceased. Appellant Ranjeet Lal also belongs to this village whereas the appellant Govind is the resident of village Irdhar. Another chargesheeted accused Dheerjan alias Dhyan Singh, who is since absconding, is resident of village Dhapla Patti Dhaundiyalsu and is the brother of witness Pyare Lal alias Prem Singh, P.W.5. Appellant Ranjet Lal is the brother-in-law of this witness.

The prosecution case, in brief, is that in the morning hours of 8.8.1998 both these appellants and Dheerjan picked up Prem Lal deceased from his house for hunting session in the forest. The appellants then were carrying guns with them. Prem Lal did not return alive to his house. On 10.8.1998 at about 11:00 a.m. P.W.5, Pyare Lal alias Prem Singh visited the house of the informant (P.W.1) Darshan Lal and told him that murder of Prem Lal had been committed at about 10:30 a.m. on 8.8.1998 by use of gun in the forest and the appellants and Dheerjan have later on dumped the dead body in the forest itself. The information was gathered by this witness at the house of the appellant Ranjeet Lal. On this information the written report, Ext.ka.2 was got prepared by the informant and the same was lodged with the concerned revenue police on 10.8.1998 at about 3:00 p.m. and a case was accordingly registered under sections 302 and 201 of I.P.C. against the appellant and Dheerjan alias Dhyan Singh.

Investigation of the case was taken up by P.W.9, Sunder Singh Rawat, Patwari. On search the dead body of Prem Lal was found lying in the dense forest at about 6:00 p.m. on 12.8.1998 at a distance of 18 kms. Of village Aithi. After the inquest the dead body was dispatched for postmortem examination, which was conducted on 13.8.1998 at about 4 p.m. at District Hospital, Pauri by P.W.6, Dr. Mahaveer Singh. On 16.8.1998, appellant Govind was arrested and on his pointing a licensed gun of his father was recovered from the house vide memo., Ext.Ka.20. Appellant Ranjeet Lal was arrested on 24.8.1998 and from his possession his licensed gun and two cartridges were taken vide memo., Ext.ka4. On 20.8.1998 confession of appellant Govind was recorded by P.W.8, Sri Kali Charan, the Chief Judicial Magistrte, Pauri Garhwal. On completion of the investigation chargesheet, Ext.Ka.18 was submitted against these appellants and absconder accused Dheerjan alias Dhyan Singh.

The case was committed to the Court of Sessions and the charges under section 302/34 and 201/34 of I.P.C. were framed against the appellants. Appellant Govind was also charged under section 25 of the Arms Act.

In order to bring home the charges against the appellants prosecution relied upon the evidence of eleven witnesses. P.W.1 Darhsna Lal besides proving the versions of the written F.I.R., Ext.ka.2 also testified that on 8.8.1998 at about 6:30-7.00 a.m. he had seen these appellants and Dheerjan having tea with his brother Prem Lal-deceased. The witness on that day left for village Salooj and on his return next day was informed by the wife of Prem Lal that her husband had not returned from the forest.

P.W.2 Chhagat Singh Pradhan of village Aithi is the Punch witness of recovery of dead body of Prem Lal. He had accompanied the informant to the concerned Patwari for lodging of the F.I.R. of the case.

P.W.3, Ram Charan gave evidence to the effect that on 8.8.1998 at about 9:00-9:30 a.m. he had seen Prem Lal alive in the company of the appellants and Dheerjan near village Bakadugarh and on query Prem Lal had told him that they are going for hunting in the forest. According to him, both the appellants were carrying a gun each at that time. The witness was returning to his village Dolibhiswara alongwith she-goats which were purchased by him from village Gurfali. Prem Lal deceased was brother-in-law (Jethu) of this witness.

P.W.4, Smt. Sateshwari who is the widow of Prem Lal stated that her husband had left the house in the company of the appellants and Dheerjan alisas Dhyan Singh for hunting in the morning hours of the ill-fated day and before leaving the house they al had taken tea in the house at about 7:00 a.m. According to her, her husband did not return that day and she did not make search of her husband next day also as her husband was in the habit of remaining out for hunting in the past also.

P.W.5, Pyare Lal alias Prem Singh gave information about the murder of Prem Lal and on this information informant, as mentioned above, lodged the report. According to him, on 9.8.1998 he was summoned to Jaspur-Khal by the appellants and Dheerjan and on that day at about 12:00 in the noon he

was told by them that Prem Lal had been killed at the hands of Dheerjan alias Dhyan Singh who wielded the gun of Ranjeet Lal. He was asked by them to give this information to Darshan Lal, the brother of the deceased.

P.W.6, Dr. Mahaveer Singh conducted the postmortem examination on the dead body of Prem Lal and prepared postmortem report, Ext.ka.5. According to him, the dead body was giving foul smell and was swollen. The skin had peeled off at places and maggots were present all over the body. The following ante-mortem injuries were detected:

1.Panetrating wound of size 1 cm. x 1 cm. rounded, cavity deep present over front of chest (in mid line), 10 cms below from supra-sternal notch.
2.Two parallel incised wound of size 1.5 cm. X 0.5 cm. each 0.5 cm. apart from each other x muscle deep, horizontal, over right side of neck, 11 cm. upward and outward form supra-sternal notch.
3.Lacerated wound of size 0.5 X 0.5 cm. x muscle deep, rounded over right side neck just below the right angle of mandible.
4.Lacerated wound of size, 1.5 cm. x 01.0 cm. x muscle deep over right lateral wall of chest, inside the anterior fold of axella, 18 cm. outward from supra-sternal notch.
5.Lacerated wound of size 1.0 X 0.5 cm. x muscle deep, over right mastoid region just behind the right pinna.
6.Lacerated wound of size 1.0 X 0.5 cm. x muscle deep, over inner side of right arm 8 cm. upward and inward form right elbow (olecranon).
7.Abrasion 2 cm. x 1 cm. over inner side of right forearm 11 cm. above the wrist.
8.Lacerated would size 2 x 0.5 cm. x muscle deep, over back of left side of chest wali just below the inferior angle of right scapula.
9. Abrasion, size 01 X 0.5 cm. Over lower end of right leg just below the right medial maleolus.

Internal examination revealed that major blood vessel of right side of neck under injury no.2 were damaged. Pericadium under injury no.1 was lacerated. Right chamber of heart was found punctured underneath injury no.1 whereas the left chamber was empty. Stomach and intestines contained semi-digested food material. The cause of death was shock as a result of ante-mortem injuries nos.1 and 2 and the death had probably occurred at about 10:30 a.m. on 8.8.1998. There was no firearm injury and the injuries

were sustained by pointed and blunt objects. Abrasions were, however, probably caused in the process of dragging when the victim might have tried to defend himself.

P.W.7, Dr. Krishna Autar was examined to prove the injury report of appellant Rajneet, who after arrest was medically examined.

P.W.8 Sri Kali Charan, C.J.M., Pauri proved the confessional statement of appellant Govind recorded under section 164 of Cri.P.C. on 20.8.1998. It is Ext.ka.7 on the record.

P.W. 9 Sunder Singh Patwari gave evidence in order to prove the various steps taken towards the investigation of the crime and submission of the chargesheet.

P.W.10, Heera Lal and P.W.11, Darshan Lal witnesses of recovery of gun from the house of appellant Govind, did not support the prosecution version and were declared hostile.

Appellants denied the accusations of the prosecution in their statements under section 313 of Cr.P.C. Appellant Govind examined himself as D.W.1 in defence and wherein he retracted his confession referred to above and gave out that he was picked up on 15.8.1998 and was coerced to give his confessional statement by revenue police. According to him, the gun of his father was taken away from the house which is being resided, by his father, brothers and sisters.

As is obvious there is no eye witness to the crime. The case against the appellant is based on circumstantial evidence. On appraisal of the circumstantial evidence and material on record. The learned Sessions Judge came to the conclusion that the charge of murder against the appellants stand proved beyond doubt and they were convicted and sentenced as mentioned above. The learned Sessions Judge was of the view that there was no need to hold the appellants also guilty of offence under section 201/34 of I.P.C. Appellant Govind was, however, acquitted of charge under section 25 of the Arms Act.

Heard Smt. Pushpa Joshi, Advocate leaned counsel for the appellants and the learned G.A. and have carefully considered the material on record.

Leaned counsel for the appellants submitted that although the factum of homicidal death of Prem Lal at the time as affi8rmed by medical evidence and at the place from where the dead body was recovered cannot be disputed, but the prosecution evidence in regard to the circumstances from which the conclusion of guilt has been drawn by the learned Sessions Judge, is not quite satisfactory. The learned trail Judge relied on the following circumstances, enumerated in paragraph nos. 20 to 24 of the judgment, for coming to the conclusion that the accused have committed the crime:

(a) As per the evidence of P.W.4, Smt. Sateshwari, the deceased accompanied by the appellants and Dheerjan alias Dhyan Singh left the house for hunting on the ill-fated day of the occurrence and thereafter did not return alive.
(b) The deceased was also seen alive lastly in the company of the appellants and Dheerjan that day in the house of the deceased by P.W.1, Darshan Lal.
(c) P.W.3, Ram Charan has also lastly seen the deceased alive in the company of these three near village Bakuragarh on that day at about 9:30 a.m. while they were going towards forest for hunting.
(d) The dead body of Prem Lal deceased was recovered form the forest where he met his homicidal death at about 10:30 a.m. on the day he was seen alive by the above witnesses.
(e) The inculpatory part of statement of appellant Govind as recorded on 20.8.1998 by P.W.8, Sri Kali Charan, C.J.M., Pauri.
(f) Information regarding the murder of Prem Lal in the forest and dead body lying there was conveyed by the appellants and their companion to P.W.5, Pyare Lal alias Prem Singh.
(g) Recording of the said information also in the written F.I.R., Ext.ka.2.
(h) Both the appellants and their companion absconded after the crime and the appellants were arrested after few days as stated above.

As mentioned above there is no eye witness of the occurrence and the case against the appellants is based on circumstantial evidence. It is well settled that in order to find conviction on circumstantial evidence, each of the incriminating pieces of circumstantial evidence should be proved by cogent and reliable evidence and the Court should be satisfied that these pieces of evidence taken together make out a complete chain from which no inference other than of guilt can be drawn against the accused persons. In other words, the proved pieces of circumstantial evidence should not be capable of being explained on any hypothesis other than the guilt of the

accused. We proceed to appraise the evidence in the case within these settled parameters.

Incriminating pieces of circumstantial evidence referred to above under clauses (a) to (d) relate to the last seen theory and at the outset it will not be out of place to mention that circumstance of last seen together has weightage where the time gap between the point of time when accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. If the time gap is long enough the possibility of other persons coming in between exist and in such an eventuality it would not be safe to come to the conclusion of guilt in regard to the accused said to be lastly seen with the accused. the circumstantial evidence on record in this case, however, clearly fall in the first category. Evidence of P.W.4, Smt. Sateshwari, the widow of the deceased is definite on the point that on the ill-fated day, i.e. 8.8.1998 in the early hours of the morning, her husband had left the house accompanied by the appellants and Dheerjan for hunting session after taking tea and at that time the appellants were carrying guns with them. The main criticism of the learned counsel for the appellants against the evidence of this witness was that if her husband had not returned home that day and even on the next day she was supposed to have made a report of the incident or said fact to the all concerned and since she did not do so, her conduct militates against her credibility and the learned Sessions Judge committed an error in placing implicit reliance on her evidence. We see no substance in the argument because the witness has categorically stated that she was not worried when her husband did not return home that day and also the next day as her husband was in the habit of remaining out for days together for hunting sessions. The reason given by the witness cannot be said to be an afterthought and therefore the evidence of the witness can neither be viewed with suspicion nor deserve to be disbelieved.

The evidence of the wife of the deceased finds support and corroboration from the statement of P.W.1, Darshan Lal, who has his house

near the residential house of the deceased and he had, on that day in the early hours of the morning, seen the appellants and their companion Dheerjan taking tea with his brother Prem Lal deceased. The evidence of the witness was also adversely commented upon by the learned counsel for the appellants in view of this witness also not taking care to report the matter to the concerned revenue police even though Prem Lal did not return home that day and next day also. The criticism made against the evidence of this witness is also of no consequence. The reason is that as stated by the witness he had on that day went away to another village to return to his village next day only and on that day to he went away to the house of his co-villager Bachchu Lal whose wife was bitten by snake and he had to stay there all night. The witness returned to his house the succeeding morning and when he was preparing to move out for search of his brother, witness Pyare Lal alias Prem Singh (P.W.5) came to him to give the information about the murder of his brother. The witness was subjected to searching infirmity in his testimony. The learned trial Judge was thus fully justified in placing reliance on his testimony also and drawing inference that the evidence of the P.W.4, wife of the deceased stands corroborated.

Apart form the evidence of these two witnesses the testimony of P.W.3, Ram Charan is also convincing and straightforward on the point that Prem Lal was seen alive soon before the homicidal death in the company of the appellants and Dheerjan when they were proceeding towards the forest for hunting. On the ill-fated day at about 9:30 a.m. this witness happened to meet them near village Bakuragarh. Against this witness, learned counsel for the appellants has vigorously urged that he is a chance witness and there was no occasion for him to be there to meet Prem Lal and the appellants and their companion as the witness belongs to another village Dolibhaiswara. We are not impressed with this submission also because the witness was returning to his village after purchasing she-goats form village Gurfali and there is nothing on record to indicate that the witness had an alternative and more convenient shorter route for his village from Gurfali. From the cross-examination of the witness his claim of making purchase of she-goats could

not be challenged and therefore, the witness has had the occasion to meet Prem Lal in the company of the appellants and their companion while returning to his village. In order words, the evidence of the witness could not have been discarded on the plea of his being the chance witness.

The evidence of the above three witnesses was also sought to be rejected on the ground of their relationship with the deceased. As is well settled mere relationship or interestedness with the deceased cannot be a ground for disbelieving the evidence of the witnesses unless and until on careful scrutiny the evidence is fond to be tainted, shaky and discrepant. Since with a cautious approach on appraisal of the evidence of these related witnesses we are of the firm view that they are truthful witnesses, we find no substance in the submission of the learned counsel for the appellants and therefore in the peculiar circumstances of the case feel forced to find favour with the inference drawn by the learned trial Judge that the evidence of these witnesses, is absolutely reliable and trustworthy.

The other incriminating piece of circumstantial evidence related to the last seen theory is the recovery of the dead body of Prem Pal deceased from the forest. The deceased went out for hunting with the appellants and their companion Dheerjan and after leaving the house with them the deceased was, about an hour before his death, seen alive near the forest from where the dead body was recovered. P.W.3 as mentioned above had seen Prem Lal alive with them at about 9:30 a.m. pm 8.8.1998 and medical evidence had affirmed that the death took place at about 10:30 a.m. on that day. The time gap between the point of time when Prem Lal was seen alive with the appellants and their companion and when the Prem Lal was murdered is definitely so small that possibility of any person other than the appellants and their companion being the author of the crime is ruled out.

As regard to the incriminating piece of evidence referred to above in clause (e), the learned trial Judge relied upon only the inculpatory part of statement of appellant Govind which was in fact sought to be placed on record by the prosecution as the confessional statement under section 164 of

the Code of Criminal Procedure. The learned Judge did not accept it as the confessional statement and rightly so because it was recorded after administering oath contrary to the procedure as prescribed under section 281 of the Code of Criminal Procedure. The appellant Govind was examined as D.W.1 and he has retracted from his statement so recorded. It is Exhibit ka.7 on the record. On account of this reason as well as for want of the compliance of the prescribed manner of recording the statement, we are of the view that the learned trial Judge should not have placed reliance on any part of the statement taking it to be the inculpatory one. Considering this we find force in the contention of the learned counsel for the appellants that this piece of circumstance arising out of the statement of appellant Govind should not have been taken to support the prosecution.

Coming to the evidence brought on record to substantiate that after the occurrence the appellants and their companion gave information of the murder of Prem Lal to witness P.W.5, Pyare Lal alias Prem Singh, it was submitted on behalf of the appellants that there was no point in giving such information to the witness by the appellants and their companion if they were not willing to seek any protection form the clutches of the law with the help of the said witness and that in the totality of the circumstances of the case learned trial Judge fell in error in taking it also as circumstance as a link to connect the appellants with the commission of the crime. Since there could not have been a joint extra-judicial confession by the appellants and their companion, the learned trial judge cannot legally be said to be unjustified in accepting the said information as a piece of incriminating circumstantial evidence pointing to the involvement of the appellants in the commission of the crime. The statement of this witness assumes greater significance in view of the fact that he is the brother of the accused Dheerjan alias Dhyan Singh who is absconding since the date of the commission of the crime and is also the brother-in-law of appellant Ranjeet Lal. The information in fact through this witness was carried to the brother of the deceased with an aim to create some sort of confusion by saying that the murder had been committed by use of gun a firearm, although the victim Prem Lal was done to death by causing fatal injuries of pointed and blunt objects. The idea in sending the information through the witness to the

informant was perhaps to divert attention from the appellants and their companion who were bound to be linked with the crime on recovery of the dead body of Prem Lal deceased. No doubt, the appellants failed in their attempt but their own action in sending the information to the informant about the incident and Prem Lal deceased created a pi9ece of incriminating circumstantial evidence against them and the same was legitimately relied upon by the learned trial Judge. In view thereof, the learned trial Judge has rightly not given undue importance to some inconsistencies in the statement of said witness Pyare Lal alias Prem Singh visa-vis the evidence of P.W.1 Darshn Lal. It need to be mentioned here that whereas with reference to the information received from witness Pyare Lal, the witness Darshan Lal (P.W.1) gave out that the murder of Prem Lal was committed by gun wielded by appellant Govind whereas witness Pyare Lal (P.W.5) stated that he was told by the appellants and their companion that the murder of Prem Lal was committed by Dhyan Singh with the gun of appellant Ranjeet Lal. There can be no gain saying that the information was carried through witness Pyare Lal for creating confusion and the infirmity in the evidence does not warrant rejection of the incriminating piece of circumstantial evidence so brought on record by the information to connect the appellants and their companion with the crime.

In regard to the above information it is also an additional factor favoring the prosecution that the same was recorded in the written F.I.R. itself. Ect.ka.2 is the written F.I.R. and the information so carried to the informant about the incident of murder of Prem Lal deceased was duly mentioned in it. This aspect of the matter lend credence to the above incriminating piece of circumstantial evidence and the same was therefore rightly taken to be a link in the chain of circumstances pointing to the culpability of the appellants.

The occurrence took place on 8.8.1998 and the F.I.R. was lodged on 10.8.1998. The appellants were named in the F.I.R. alongwith their companion Dheerjan alias Dhyan Singh as the culprits. Appellant Govind was arrested on 15.8.1998 whereas appellant Ranjeet Lal could be arrested much later on 24.8.1998. Appellant Ranjeet Lal belongs to the village of

Prem Lal deceased and there is nothing on record to indicate that after the occurrence appellant remained in his village. This could also be said with regard to other appellant Govind and we find no reason to disbelieve the evidence of Investigating Officer P.W.9 Sunder Singh that these appellants were not available in their villages before arrest. The appellants were absconding soon after the occurrence and this sort of conduct was thus rightly taken note of and relied upon as piece of incriminating circumstantial evidence completing the chain of circumstances leading to the inference of guilt of these appellants.

So far as the cause of the crime is concerned, the learned trial Judge rightly rejected the argument that in the absence of the cogent evidence of the motive of the crime, the appellants should not be held guilty of the commission of the crime of murder of Prem Lal deceased. The circumstantial evidence having been found sufficient and reliable, the submission in regard to motive loose significance.

An attempt was also made to create a dent in the prosecution evidence by pointing out alleged inconsistency between the evidence of the wife of the deceased and the medical evidence. It has come in the evidence of the wife that on the ill-fated day her husband Prem Lal had left the house in the company of the appellants and their companion after taking tea. On post mortem examination semi-digested food material was found present in the stomach and intestines of the deceased. Pointing out to this it was argued that the possibility cannot be ruled out that the deceased after leaving his house might have been in the company of person or persons other then the appellants and their companion and at that time had taken some eatables thereby ruling out the possibility of remaining with the appellants and their companion Dheerjan till he remained alive. The submission of the learned counsel for the appellants is mere hypothetical one and it cannot be taken to disbelieve the evidence of the prosecution as a whole. Since the deceased was out for hunting sessions with the appellants and their companion, there was every possibility that they together consumed some eatables and this was the reason that just before the murder the deceased was seen alive by the

Prosecution witness near the forest in the company of the appellants and Dheerjan.

For the reasons stated above, we find that the prosecution case based on circumstantial evidence has been established beyond all reasonable doubt and the learned trial Judge has rightly accepted the evidence of the prosecution in regard to its theory of last seen together, recovery of the dead body of Prem Lal from the forest, his murder having been committed soon after he was last seen alive with the appellants and another, information of the incident with tainted version sent by the appellant and recording of the same in the first information report and the appellants and their companion thereafter absconding from their houses, complete the chain of circumstances leading to the inference that none other than the appellants and their companion are guilty of the commission of the crime of murder of Prem Lal.

In the result, the appeals filed by both the appellants are devoid of merit and deserve dismissal. We direct accordingly. The appellants are in jail. They shall serve out the sentences awarded against them by the learned trial Judge.

November 16,2002.

**(Hon'ble Irshad Hussain J.)** **(Hon'ble A.A.Desai, C.J.)**